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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-262
Access Charge Reform Order	)	

PETITION FOR RECONSIDERATION

The National Exchange Carrier Association, Inc. (NECA)[1] hereby files a Petition for Reconsideration of the Commission's *Access Reform Order*.[2] NECA limits its petition to the issue of whether the Commission should have adopted conforming changes to the rules governing calculation of NECA Carrier Common Line rates, rather than deferring such changes to a later proceeding on access reform for rate-of-return local exchange carriers (LECs). As demonstrated below, the Commission should adopt corrected rules on reconsideration. In the alternative, the Commission should conduct a separate expedited proceeding to consider these rule changes, or waive application of the current rule.

BACKGROUND

The *Access Reform Order* is the third in the trilogy of Commission orders that implement

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[1] NECA is a not-for-profit association, established by FCC order, which administers a number of programs for the telecommunications industry. Among NECA's roles under the Commission's rules, is the preparation of access charge tariffs on behalf of over 1,200 telephone companies that do not file separate tariffs; and the collection and distribution of access charge revenues. *See* 47 C.F.R. §§ 69.603 and 64.604.

[2] Access Charge Reform, *First Report and Order,* FCC 97-158, CC Docket No. 96-262, 62 Fed. Reg. 31868 (1997).

the Telecommunications Act of 1996.[3] In its *Universal Service Order*, among other things, the Commission removed Long Term Support (LTS) from the interstate access charge system and provided, instead, for recovery of comparable payments from the new federal universal service support mechanisms.[4]

In adopting this change, the Commission noted that CCL rate calculations for both price cap carriers and NECA Carrier Common Line (CCL) participants would be affected,[5] and stated that the necessary conforming rule changes would be made in the access reform proceeding.[6] In its *Access Reform Order,* the Commission revised the Part 69 access charge rules to reflect the removal of LTS amounts from price cap carriers' CCL calculations,[7] but deferred consideration of changes to the CCL rate calculation for NECA's tariff participants to a separate proceeding.[8] According to the Commission, this step was necessary because it had not obtained comment on how the NECA CCL rate calculation rules should be revised.[9]

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[3] The other two orders are Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, FCC 96-325, CC Docket No. 96-98, 61 Fed. Reg. 45475 (1996) (*Interconnection Order*); and the May 8, 1997 Universal Service Order. Federal-State Joint Board on Universal Service, *Report and Order*, FCC 97-157, CC Docket No. 96-45, 62 Fed. Reg. 32862 (1997) (*Universal Service Order*).

[4] *Universal Service Order* at ¶756.

[5] *Id.* at ¶¶ 759, 771.

[6] *Id.* at ¶771.

[7] *Access Reform Order* at ¶¶ 375-76.

[8] *Id.* at ¶377. The Commission indicated that it would consider such rule changes in its planned proceeding on access reform for non-price cap LECs.

[9] *Id.*

I. CONFORMING REVISIONS TO THE CCL RATE CALCULATION RULES FOR RATE OF RETURN COMPANIES ARE URGENTLY NEEDED.

The Commission has recognized that the current rules for calculating non-price cap companies' CCL rates cannot be left in place. These rules require that the NECA CCL tariff be set to recover the average of price cap LECs' CCL charges. Since price cap LECs are required to lower their CCL rates on January 1, 1998 to reflect removal of LTS, the result "would automatically reduce the CCL revenues of NECA pool members."[10] The Commission has made clear that this was not its intent:

> The elimination of price-cap ILECs' LTS obligations will allow their CCL charges to fall, but there is no corresponding reason for a reduction in the NECA CCL tariff. Yet under our current rules, the NECA CCL charge would fall simply because of our regulatory changes to price-cap ILEC's LTS payment obligations. We must therefore establish a new method to set the NECA CCL tariff.[11]

It is critical that the Commission amend the pool CCL rate methodology prior to implementing the other January 1, 1998 rule changes. Setting the NECA CCL rate to a price cap average rate, while simultaneously making LTS a fixed formula amount, would prevent NECA pool companies from recovering CCL revenue requirements.[12] The rules must be changed to permit non-price cap LECs, including NECA pool participants, to set CCL rates at levels that will recover the difference between CL revenue requirements and revenues recovered through

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[10] *Id.* at ¶377

[11] *Universal Service Order* at ¶771

[12] The current rule operates such that LTS is a variable amount, dependent on the difference between the revenues earned from charging a nationwide average CCL rate and the pool CCL revenue requirement. The *Universal Service Order* rule revisions changing LTS to a historic-based formula amount will only accomplish the intended result if the CCL rate is allowed to become variable.

subscriber line charges, special access surcharges, and LTS payments.

To assist the Commission in accomplishing these changes, NECA has prepared model rule revisions. These model revisions (1) delete unnecessary phrases that refer to price cap company CCL rate calculations, and (2) specify methods for calculating CCL rates of non-price cap companies that conform to the Commission's revised access charge rules and LTS revisions.[13] Under NECA's proposed methodology, premium and non-premium CCL rates for non-price cap companies, including the NECA pool, would be computed as under prior methods, but would be based on the difference between CL revenue requirements and amounts recovered from subscriber line charges, special access surcharges, and LTS payments. NECA's proposed revisions to section 69.105 of the Commission's rules are presented with underlined and strikeout text in Attachment A, and in final form in Attachment B.

II. ADDITIONAL NOTICE AND COMMENT PROCEEDINGS ARE NOT NEEDED TO IMPLEMENT THE NECESSARY CONFORMING CHANGES TO SECTION 69.105 OF THE COMMISSION'S RULES.

As noted above, though the Commission recognized that conforming rule amendments are needed, it deferred consideration of such changes to a separate proceeding because it had not sought comment on specific rule amendments. NECA believes, however, that further notice and comment proceedings to implement these conforming changes are unnecessary because the policy decisions underlying the proposed rule revisions have already been adopted and clearly articulated, and because the proposed minor rule revisions merely implement those policy

[13] *See* 47 C.F.R. § 69.154, adopted in *Access Charge Reform Order,* Appendix C; and 47 C.F.R. § 54.403, adopted in *Universal Service Order,* Appendix I.

decisions.[14] Moreover, no party's substantive rights are adversely affected by the proposed changes, which merely revise the rules to reflect and remain consistent with changes to other rules adopted in the *Access Reform* and *Universal Service Orders*.

Changes in the recovery of LTS amounts and price-cap carrier CCL rate computations are scheduled to become effective on January 1, 1998. It appears unlikely, however, that the Commission will be able to resolve the numerous issues associated with access reform for rate of return LECs in that time frame. NECA is concerned, therefore, that the Commission's extensive schedule and limited resources may prevent it from addressing the CCL rate calculation anomaly described above in time for conforming access tariffs to become effective on the January 1, 1998 date.

Deferral of the rule revisions proposed herein to a separate proceeding appears unnecessary. Under section 553(b)(3) of the Administrative Procedures Act (APA), notice and comment requirements do not apply:

> (A) to interpretative rules, general statements of policy, or rule of agency organization, procedure or practice; or
> (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[15]

It appears well within the Commission's discretion, under subsection (B) above, to adopt the conforming rule changes described in this petition without further notice and comment. In the *Nondominant Carriers' Tariff Order*, for example, the Commission amended certain

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[14] *See supra*, note 11 and accompanying text.

[15] 5 U.S.C.A. § 553(b)(3) (West 1996).

provisions of its rules to conform them with an earlier court decision.[16] The Commission in that case found that further notice and comment was unnecessary and not required under section 553(b)(3)(B) of the APA because such changes were purely ministerial and necessary to conform its written rules to the court's mandate.[17] Similarly, here, the Commission needs to make simple "ministerial" changes to its CCL rate calculation rule "necessary to conform" that rule to its other rules changes in the *Access Reform Order*. Thus, an additional, separate rulemaking proceeding does not appear to be necessary.[18]

If, however, the Commission concludes that a separate rulemaking proceeding is required before it can adopt conforming rule changes to the non-price cap CCL rate calculation rules, NECA requests that it establish a separate, expedited rulemaking to accomplish this result in time for the necessary access tariff filings to be made prior to the end of the year. Alternatively, NECA requests that the Commission issue an order waiving section 69.105(b)(2)-(3) for NECA's CCL pool, so as to allow NECA to reflect revised LTS formula amounts in its CCL tariff rates effective January 1, 1998.

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[16] In the Matter of Tariff Filing Requirements for Nondominant Common Carriers, *Order*, 10 FCC Rcd. 13653 at ¶20 (1995).

[17] *Id.*

[18] *See also* Revision of Part 2 of the Commission's Rules Relating to the Marketing and Authorization of Radio Frequency Devices, *Report and Order*, ET Docket No. 94-45, RM-8125 (1997) ("Since these changes to the rules involve minor or merely technical amendments, public notice and comment on these changes are unnecessary pursuant to Section 553(b)(3)(B) of the Administrative Procedure Act); Amendment of Part 74 of the Commission's Rules Concerning FM Booster Stations and Television Booster Stations, *Order*, 3 FCC Rcd 304 (1988) ("In as much as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions, and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions, 5 U.S.C. 553(b)(3)(B).").

III. CONCLUSION

NECA urges the Commission to adopt rule revisions that conform section 69.105 of its rules, 47 C.F.R. § 69.105, to the rule changes adopted in the *Universal Service* and *Access Charge Reform Orders*. Further notice and comment proceedings to implement these conforming changes are not needed because the policy decisions underlying the proposed rule revisions have already been adopted and clearly articulated, and because the proposed rule revisions merely implement those policy decisions.

In the alternative, the Commission should either conduct a separate, expedited proceeding to consider the rule revisions proposed herein, or waive section 69.105(b)(2)-(3) for the calculation of NECA's CCL pool rate that will become effective January 1, 1998.

Respectfully submitted,
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July 11, 1997

ATTACHMENT A

§ 69.105 Carrier common line for non-price cap local exchange carriers.

(a) This section is applicable only to local exchange carriers that are not subject to price cap regulation as that term is defined in § 61.3(x) of this Chapter. A charge that is expressed in dollars and cents per access minute of use shall be assessed upon all interexchange carriers that use local exchange common line facilities for the provision of interstate or foreign telecommunications services, except that the charge shall not be assessed upon interexchange carriers to the extent they resell MTS or MTS-type services of other common carriers (OCCs).

(b) (1) For purposes of this section and § 69.113:

(i) A Carrier or other person shall be deemed to receive premium access if access is provided through a local exchange switch that has the capability to provide access for an MTS-WATS equivalent service that is substantially equivalent to the access provided for MTS or WATS, except that access provided for an MTS-WATS equivalent service that does not use such capability shall not be deemed to be premium access until six months after the carrier that provides such MTS-WATS equivalent service receives actual notice that such equivalent access is or will be available at such switch;

(ii) the term "open end" of a call describes the origination or termination of a call that utilizes exchange carrier common line plant (a call can have no, one, or two open ends); and

(iii) All open end minutes on calls with one open end (e.g., an 800 or FX call) shall be treated as terminating minutes.

(2) For ~~association Carrier Common Line tariff participants~~ local exchange carriers that are not subject to price cap regulation:

(i) the premium originating Carrier Common Line charge shall be one cent per minute, except as described in § 69.105(b)(3), and

(ii) The premium terminating Carrier Common Line charge shall be computed as follows:

~~(A) for each telephone company subject to price cap regulation, multiply the company's proposed premium originating rate by a number equal to the sum of the premium originating base period minutes and a number equal to 0.45 multiplied by the non-premium originating base period minutes of that telephone company;~~

~~(B) for each company subject to price cap regulation, multiply the company's proposed premium terminating rate by a number equal to the sum of the premium terminating base period minutes and a number equal to 0.45 multiplied by the non-premium terminating base period minutes of that telephone company;~~

~~(C) sum the numbers computed in (A) and (B) for all companies subject to price cap regulation;~~

~~(D)~~ (A) from the Carrier Common Line revenue requirement number ~~computed in (C)~~ segregated in accordance with § 69.502, subtract a number equal to one cent times the sum of the premium originating ~~base~~ test period minutes and a number equal to 0.45 multiplied by the non-premium originating ~~base~~ test period minutes ~~of all telephone companies subject to price cap regulation,~~ and;

~~(E)~~ (B) divide the number computed in ~~(D)~~ (A) by the sum of the premium terminating ~~base~~ test period minutes and a number equal to 0.45 multiplied by the non-premium terminating ~~base~~ test period minutes ~~of all telephone companies subject to price cap regulation~~.

(3) If the calculations described in § 69.105(b)(2) result in a per minute charge on premium terminating minutes that is less than one cent, both the originating and terminating premium charges ~~for the association CCL tariff participants~~ shall be computed by dividing the number computed in ~~(C)~~ (A) by a number equal to the sum of the premium originating and terminating ~~base~~ test period minutes and a number equal to 0.45 multiplied by the sum of the non-premium originating and terminating ~~base~~ test period minutes ~~of all telephone companies subject to price cap regulation~~.

~~(4) The Carrier Common Line charges of telephone companies that are not association Carrier Common Line tariff participants shall be computed at the level of Carrier Common Line access element aggregation selected by such telephone companies pursuant to § 69.3(e)(7). For each such Carrier Common Line access element tariff -~~

~~(i) the premium originating Carrier Common Line charge shall be one cent per minute, and~~

~~(ii) The premium terminating Carrier Common Line charge shall be computed by subtracting the projected revenues generated by the originating Carrier Common Line charges (both premium and non- premium) from the Carrier Common Line revenue requirement for the companies participating in that tariff, and dividing the remainder by the sum of the projected premium terminating minutes and a number equal to .45 multiplied by the projected non-premium terminating minutes for such companies.~~

~~(5) If the calculations described in § 69.105(b)(4) result in a per minute charge on premium terminating minutes that is less than one cent, both the originating and terminating premium charges for the companies participating in said Carrier Common Line tariff shall be computed by dividing the projected Carrier Common Line revenue requirement for such companies by the sum of the projected premium minutes and a number equal to .45 multiplied by the projected non-premium minutes for such companies.~~

~~(6) Telephone companies that are not association Carrier Common Line tariff participants shall submit to the Commission and to the association whatever data the Commission shall determine are necessary to calculate the charges described in this section.~~

(c) Any interexchange carrier shall receive a credit for Carrier Common Line charges to the extent that it resells services for which these charges have already been assessed (e.g., MTS or MTS-type

service of other common carriers).

ATTACHMENT B

Section 69.105 maintains the changes made by the Commission in its *Access Charge Reform Order*, 62 Fed. Reg. 31868 (1997). In addition, subparagraph (b)(2) is renamed as follows. Subparagraphs (b)(2)(ii)(A)-(C) and (b)(4)-(6) are deleted. Subparagraphs (b)(2)(ii)(D) and (E) are relabeled (b)(2)(ii)(A) and (B) respectively, and revised to read as follows. Subparagraph (b)(3) is revised to read as follows:

§ 69.105 Carrier common line for non-price cap local exchange carriers.

* * * * *

[(b)](2) For local exchange carriers that are not subject to price cap regulation:

* * * * *

(ii) The premium terminating Carrier Common Line charge shall be computed as follows:

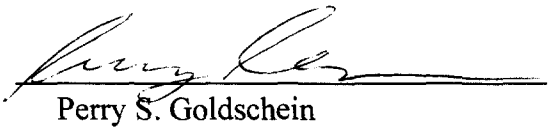
(A) from the Carrier Common Line revenue requirement number segregated in accordance with § 69.502, subtract a number equal to one cent times the sum of the premium originating test period minutes and a number equal to 0.45 multiplied by the non-premium originating test period minutes; and

(B) divide the number computed in (A) by the sum of the premium terminating test period minutes and a number equal to 0.45 multiplied by the non-premium terminating test period minutes.

(3) If the calculations described in § 69.105(b)(2) result in a per minute charge on premium terminating minutes that is less than one cent, both the originating and terminating premium charges shall be computed by dividing the number computed in (A) by a number equal to the sum of the premium originating and terminating test period minutes and a number equal to 0.45 multiplied by the sum of the non-premium originating and terminating test period minutes.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served this 11th day of July 1997, by mailing copies thereof by United States Mail, first class postage paid or by hand delivery, to the persons listed below.

By: 
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